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In the Supreme Court of the United States

OCTOBER TERM, 1994

ELOISE ANDERSON, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, ET AL., PETITIONER

v.

VERNA EDWARDS, ETC., ET AL.

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether a State participating in the Aid to Families With Dependent Children (AFDC) program is permitted under federal regulations to require that all children living with an adult caretaker relative in the same household be included in the same AFDC assistance unit.

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INTEREST OF THE UNITED STATES

Along with participating States, the Secretary of Health and Human Services (the Secretary or HHS) administers the Aid to Families with Dependent Children (AFDC) program. The AFDC program is "a scheme of cooperative federalism," *King* v. *Smith*, 392 U.S. 309, 316 (1968), in which States agree to administer the program in accordance with state plans that conform to the Social Security Act and the Secretary's regulations, 42 U.S.C. 602 (1988 & Supp. IV 1992), and the federal government in turn supplies matching funds to those States, 42 U.S.C. 603 (1988 & Supp. IV 1992). The court

below has invalidated, as inconsistent with the Secretary's regulations, a California rule mandating the inclusion within a single AFDC "assistance unit" of all children living with a caretaker relative in the same household. The Secretary has long interpreted her regulations to permit such a state rule, and the AFDC programs of numerous States contain functionally identical rules. The United States has an interest in the uniform interpretation of federal regulations governing the AFDC program. The United States also has a fiscal interest in this case, because invalidation of California's rule would result in increased state AFDC payments in California and in the States that have adopted similar rules and would therefore mandate the increased expenditure of federal matching funds.

STATEMENT

1. a. Congress established the AFDC program as part of the Social Security Act of 1935 (the Act), ch. 531, Tit. IV, 49 Stat. 627, 42 U.S.C. 601-617 (1988 & Supp. IV 1992), "to provide financial assistance to needy dependent children and the parents or relatives who live with and care for them." *Shea* v. *Vialpando*, 416 U.S. 251, 253 (1974). A "dependent child" is a needy child under the age of 18, or under the age of 19 and a student, who has been deprived of parental care or support by the death, incapacity, or "continued absence from the home" of a parent, and who is living "with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home." 42 U.S.C. 606(a).

The AFDC program is "a scheme of cooperative federalism." *King* v. *Smith*, 392 U.S. 309, 316 (1968).

Participating States must abide by the requirements of the Social Security Act and implementing regulations and submit a "state plan" for approval by the Secretary, 42 U.S.C. 602 (1988 & Supp. IV 1992); in return, the federal government reimburses participating States on a matching-funds basis, 42 U.S.C. 603 (1988 & Supp. IV 1992). *Heckler* v. *Turner*, 470 U.S. 184, 189 (1985). Each State must establish a statewide "standard of need," which is "the amount deemed necessary by the State to maintain a hypothetical family at a subsistence level." *Shea*, 416 U.S. at 253; see 42 U.S.C. 602(a)(23). Each State also must set a "level of benefits," which determines the maximum amount of assistance actually paid. *Rosado* v. *Wyman*, 397 U.S. 397, 408 (1970).

Participating States have "broad discretion in determining both the standard of need and the level of benefits." *Heckler*, 470 U.S. at 189 n.3 (quoting *Shea*, 416 U.S. at 253). The family is eligible for AFDC benefits if its countable income and resources do not exceed state-specified limits, subject to federally-prescribed maximums. 42 U.S.C. 602(a)(7)(B) and (8) (1988 & Supp. IV 1992), and 602(a)(17). The amount paid to the family is based upon the difference between its countable income and the benefit level established by the State for a family of that size. *Shea*, 416 U.S. at 254.[1] An AFDC allowance

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[1] States need not, however, pay the entire difference between a family's income and the statewide standard of need. States may establish "dollar maximums on the amount of public assistance payable to any one individual or family." *Rosado*, 397 U.S. at 408-409. At their option, States may also provide additional assistance for certain "special need[s]." 45 C.F.R. 233.20(a)(2)(v). We use the term "countable income" to reflect the fact that the States must exclude certain monetary receipts from income for the purpose of determining the family's AFDC eligibility. See, *e.g.*, 42 U.S.C. 602(a)(8)(A)(i) (in determining countable income of an AFDC

typically consists of a basic allowance for expenses such as food, clothing, and various household items; a home energy allowance; and an allowance for shelter and heat. *Bray* v. *Dowling*, 25 F.3d 135, 139 (2d Cir. 1994), petition for cert. pending, No. 93-5845.

b. For purposes of administering the program, AFDC recipients are grouped into "assistance units," also known as "filing units" or "family budget units." Those units consist of all "individuals whose income, resources and needs are considered as a unit for purposes of determining eligibility and the amount of payment." 45 C.F.R. 206.10(b)(5). One AFDC payment per month is made to each assistance unit. The Act leaves to the States the determination of which individuals within a household shall be considered part of the same assistance unit. Specifically, Section 402(a)(7)(A) provides that

> the State agency * * * shall, in determining need, take into consideration any other income and resources of any child or relative claiming [AFDC], or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid.

42 U.S.C. 602(a)(7)(A).

In 1984, as part of the Deficit Reduction Act of 1984 (DEFRA), Pub. L. No. 98-369, Tit. VI, § 2640(a), 98 Stat. 1145, Congress amended the statute to require that, with certain specified exemptions, an AFDC beneficiary be included in the same assistance unit with those of his or her parents, brothers, and sisters who live in the same

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family, State must disregard income earned from part-time employment by a dependent child who is also a full- or part-time student).

household. 42 U.S.C. 602(a)(38); see *Bowen* v. *Gilliard*, 483 U.S. 587, 589-590 & n.2 (1987). That amendment sought to end the practice by which an applicant would exclude from the assistance unit the parents or siblings with whom the beneficiary lived but whose income would if attributed to the assistance unit either disqualify it altogether or reduce its AFDC allowance. *Id.* at 589, 592-594; see 1 Senate Comm. on Finance, 98th Cong., 2d Sess., *S. Print 98-169, Deficit Reduction Act of 1984*, 980 (Comm. Print 1984) [hereinafter Senate Print]. Thus, Congress sought to "ensure that the income of family members who live together and share expenses is recognized and counted as available to the family as a whole." *Gilliard*, 483 U.S. at 593-594 (quoting Senate Print).

2. Respondents are children and their caretaker relatives who qualify for California's AFDC program. Each respondent lives in a home in which an adult relative provides care to two or more dependent children who are not siblings of one another, and in which the adult relative is not legally responsible under state family law for at least one of the dependent children.[2] Respondents brought this class action in the United States District Court for the Eastern District of California against the Acting Director of the California Department of Social Services. Pet. App. 3-4, 15-16. The lawsuit challenged rules of that agency requiring that AFDC recipients in respondents' position be combined into a single "assistant unit" (AU) or "family budget

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[2] Named respondent Verna Edwards, for example, cares for her granddaughter and two grandnieces. Respondent Barbara Moore cares for her daughter, her son, and two orphaned grandchildren. Respondent Vanessa Hamilton cares for her two sons and her three orphaned nephews by two different sisters. Pet. App. 19.

unit" (FBU). See Cal. Manual of Policies & Proc. (MPP) 44-205.31 (Pet. App. 51); MPP 82-824.1 (Pet. App. 52) (successor regulation) [hereinafter, the California filing rule].[3]

Respondents alleged (and California does not dispute) that the California filing rule had the effect of reducing the aggregate AFDC benefits provided to the household of each respondent. That reduction occurred because California's grant program is premised on the assumption that each assistance unit achieves economies of scale as its size increases and that each additional child realizes a benefit from a portion of the AFDC funds received by the assistance unit as a whole. See Cal. Welf. & Inst. Code § 11450 (West 1991). Thus, a two-child household would receive more AFDC funding if those children were grouped into separate AFDC units than if they were grouped together as one unit.

Respondents alleged that the California filing rule conflicted with three regulations promulgated by the Secretary under the Social Security Act. The first regulation (45 C.F.R. 233.20(a)(2)(viii)) (Pet. App. 30) provides:

> A State Plan for * * * AFDC * * * must * * * [p]rovide that the money amount of any need item included in the standard will not be prorated or otherwise reduced solely because of the presence in the household of a non-legally responsible individual; and the agency will not assume any contribution

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[3] MPP 44-205.31 (Pet. App. 51) provides in pertinent part that "[a]ll of the eligible child(ren) will be in one FBU if there is only one caretaker relative in the home." MPP 82-824.1 provides (Pet. App. 52) that "[t]wo or more AUs in the same home shall be combined into one AU when * * * [t]here is only one caretaker relative."

> from such individual for the support of the assistance unit [except as otherwise provided].

The second regulation (45 C.F.R. 233.90(a)(1)) (Pet. App. 32) provides that the threshold determination under 42 U.S.C. 606(a) of whether a child was deprived of "parental support," and is therefore AFDC-eligible, "will be made only in relation" to the child's natural or adoptive parent, or a stepparent obligated under state law to support the child. It further states:

> [T]he inclusion in the family, or the presence in the home, of a 'substitute parent' or 'man-in-the-house' or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State.

The third regulation (45 C.F.R. 233.20(a)(3)(ii)(D)) (Pet. App. 31) provides that for purposes of determining eligibility and need under 42 U.S.C. 602(a)(7),

> Income * * * and resources available for current use shall be considered. * * * [I]ncome and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

Respondents alleged that the filing rule violated the three regulations just quoted by improperly presuming that a caretaker relative would share the assistance unit's AFDC allowance with the child or children within that unit for whom that caretaker was not legally responsible under state family law. In fact, respondents claimed, because the caretaker relative lacked such

responsibility, the unit's AFDC grant was income not "actually available" to the child or children.

b. The district court granted summary judgment for respondents. Pet. App. 26. The court stated that it was bound under the Ninth Circuit's decision in *Beaton* v. *Thompson*, 913 F.2d 701 (1990), to invalidate California's filing rule. Pet. App. 25. At issue in *Beaton* was a rule adopted by the State of Washington that "authorize[d] only one assistance unit grant for all needy eligible siblings and nonsiblings living with a single caretaker relative or relative married couple." 913 F.2d at 702 (quoting Wash. Admin. Code § 388-24-050(3) (1989)). That rule, the Ninth Circuit stated in *Beaton*, "implicitly assume[d] that the caretaker relative will be paying for some of the expenses of the home," even though that relative was not legally responsible for each of the children in the assistance unit. 913 F.2d at 704. Thus, the Washington rule was found to violate 45 C.F.R. 233.20(a)(2)(viii), because it reduced a dependent child's benefits "solely because of the presence in the house of a non-legally responsible adult." 913 F.2d at 704. Further, the rule in *Beaton* was found to violate 45 C.F.R. 233.90(a)(1) and 233.20(a)(3)(ii)(D) because it "presum[ed] a non-legally responsible person is contributing to the needy child's expenses." 913 F.2d at 704. The district court in this case concluded that because California's rule is indistinguishable from Washington's, it also is precluded by HHS's regulations. Pet. App. 24.

c. The court of appeals affirmed, Pet. App. 1-4, concluding that *Beaton* "controls this case." *Id.* at 4. The court denied California's petition for rehearing with suggestion of rehearing en banc. *Id.* at 28-29.

SUMMARY OF ARGUMENT

California's filing rule comports with the text, history, and purpose of HHS's regulations. Those regulations are designed to provide economic security for dependent children. To that end, they protect such children against the possibility that a State will reduce their AFDC allowance based on the assumption that a person in the household who has no legal duty towards a dependent child is nonetheless contributing income to that child. But a filing rule that consolidates into one assistance unit dependent children in a household under the care of a relative does not present that situation, for two reasons. First, unlike the non-responsible person in the household contemplated by HHS's three regulations, an AFDC relative caretaker has a distinct legal duty under the program to share the AFDC allowance with all the children in the assistance unit, regardless of whether that caretaker is responsible for each of those children under state family law. Second, California's filing rule does not reduce the AFDC allowance given to a dependent child. The decrease in the per capita size of the allowance awarded an assistance unit under the filing rule as an additional child joins that unit merely reflects the State's presumption that economies of scale exist as a new member joins a household. That presumption is permissible under *Dandridge* v. *Williams*, 397 U.S. 471, 478 (1970).

The Ninth Circuit also erred in failing to acknowledge, let alone give any weight to, HHS's longstanding view that filing rules such as California are consistent with its regulations. The Secretary has taken this position in separate pronouncements in 1968, 1976, 1980, 1986, 1992, and 1994. Such an administrative interpretation by an agency of its own regulations is entitled

to "controlling weight" unless it is "plainly erroneous or inconsistent with the regulation," *Udall* v. *Tallman*, 380 U.S. 1, 16-17 (1965). HHS's interpretation is neither.

Respondents' argument that the filing rule is barred by the Act is without merit. States have great latitude under the Act to develop their own AFDC programs, and nothing in the Act prohibits States from mandating consolidation of assistance units beyond the consolidation required by DEFRA. Also unavailing is respondents' argument that the filing rule violates the requirement under HHS's regulations that States assure equitable treatment of AFDC beneficiaries within their borders. The California filing rule seeks to achieve a form of equity by according uniform treatment to similarly sized households. Under the Act, that is a permissible policy choice for a State.

ARGUMENT

FEDERAL REGULATIONS PERMIT A STATE TO REQUIRE THAT ALL CHILDREN LIVING WITH AN ADULT CARETAKER RELATIVE BE INCLUDED IN THE SAME AFDC ASSISTANCE UNIT

The court of appeals erred in holding that the California filing rule violates the three federal regulations on which it relied. That rule is fully consistent with the text, history, and purpose of the federal regulations. Those regulations serve the purpose of protecting dependent children against the possibility that a State will disqualify them from AFDC benefits, or reduce the amount of those benefits, based on nothing more than the bare assumption that a person living in a child's household who has no legal obligation towards that child will share his or her outside income with that child. But, as we explain below—and as the Department

of Health and Human Services (HHS) and its predecessor (the Department of Health, Education, and Welfare (HEW)) have long recognized—the regulations responding to that concern do not apply where the person in question is the child's AFDC caretaker relative. In that situation, the caretaker relative has a legal duty to use the AFDC allowance for the benefit of all children in the assistance unit.

The text of the regulations confirms this understanding. A State rule that consolidates all children living with a caretaker relative into one assistance unit does not reduce a dependent child's AFDC allowance "solely because of the presence in the household of a non-legally responsible individual" (45 C.F.R. 233.20(a)(2)(viii)), or based on income not "actually available" to that child (45 C.F.R. 233.20(a)(3)(ii)(D)), or based on income of a "substitute parent" or a "man-in-the-house" (45 C.F.R. 233.90(a)(1)). Any reduction in the per capita amount of the allowance awarded to such a unit when an additional child is consolidated into the unit results instead from the State's entirely permissible presumption that an AFDC household will benefit from economies of scale as its size increases.

A. THE FEDERAL REGULATIONS WERE ADOPTED IN RESPONSE TO THE SPECIFIC CONCERNS ADDRESSED BY THIS COURT IN *KING* V. *SMITH* AND ITS PROGENY, AND ARE INAPPLICABLE IN THIS CASE

1. The federal regulations at issue here are based on this Court's decisions in *King* v. *Smith*, 392 U.S. 309 (1968), *Lewis* v. *Martin*, 397 U.S. 552 (1970), and *Van Lare* v. *Hurley*, 421 U.S. 338 (1975). In *King*, this Court

invalidated an Alabama "substitute father" rule that denied AFDC benefits to children of a mother who cohabited with an able-bodied man, regardless of whether the man was legally obligated to support the children or whether he did in fact contribute to their support. This Court held that Alabama's rule conflicted with Section 406(a) of the Act, 42 U.S.C. 606(a), because in defining a dependent child as a child deprived of parental support, Congress meant to include among "parents" "only those persons with a legal duty of support." 392 U.S. at 327. To deprive a child of eligibility based on the assumption that a member of the household who did not support the child and had no legal duty to do so would in fact share his income with the child, *King* held, frustrated Congress's goal of providing "economic security for children." *Id.* at 329-330.

HEW codified *King*'s holding in 45 C.F.R. 233.90(a)(1). That regulation prohibits a State from either disqualifying or reducing the AFDC benefits of a dependent child based on "the inclusion in the family, or the presence in the home, of a 'substitute parent' or 'man-in-the-house,'" or any other non-parent. See *Van Lare*, 421 U.S. at 345. In *Lewis*, this Court applied 45 C.F.R. 233.90(a)(1) to invalidate a California rule conclusively presuming contributions of income by a non-legally obligated "adult male person assuming the role of [a] spouse," such as a common law husband or a stepfather who had not adopted the child. 397 U.S. at 554, 560. The Court noted that absent "a legal obligation to support," a law imputing income to a child "might merely be a device for lowering welfare benefits without guaranteeing that the child would regularly receive the income on which the reduction [in AFDC support] is based." *Id.* at 559.

Finally, in *Van Lare*, this Court invalidated a New York rule that reduced pro rata the shelter allowance

provided to AFDC units that shared their households with nonpaying lodgers. The Court pointed that under the New York rule, "the nonpaying lodger's mere presence results in a decrease in benefits." 421 U.S. at 346. Thus, the rule had the same vice as those invalidated in *King* and *Lewis*—namely, that the amount of the AFDC allowance provided to a dependent child was reduced even though the person on whose account that reduction was being made "may be contributing nothing to the needy child." 421 U.S. at 346-347.

HEW codified *Van Lare*'s holding in 45 C.F.R. 233.20(a)(2)(viii). That regulation prohibits a State from reducing an AFDC allowance "solely because of the presence in the household of a non-legally responsible individual," and from "assum[ing] any contribution from such individual for the support of the assistance unit." See 42 Fed. Reg. 6583, 6584 (1977) (explaining that 45 C.F.R. 233.20(a)(2)(viii) was promulgated to implement *Van Lare*). Section 233.20(a)(3)(ii)(D), which allows States to impute to an AFDC applicant or recipient only income "actually available" to that individual, was in turn adopted in its present form to reflect this Court's decisions in the three AFDC cases. See 40 Fed. Reg. 12,507-12,508 (1975); *Wilkes* v. *Gomez*, 32 F.3d 1324, 1328 (8th Cir. 1994) (explaining that 45 C.F.R. 233.20(a)(3)(ii)(D), 233.20(a)(2)(viii), and 233.90(a)(1) codify the "availability principle" of *King* and *Van Lare*).

2. The three HHS regulations thus have the common goal of redressing "specific concerns regarding the imputation of income from non-AFDC sources." *Bray* v. *Dowling*, 25 F.3d 135, 144 (2d Cir. 1994), petition for cert. pending, No. 93-5845. As the Second Circuit has explained, in the three cases that animated those regulations, state income-imputation rules had left an

"uncertainty of support" for the dependent child; the child

> had no recourse if the 'substitute father' or 'lodger' failed to contribute to the AFDC unit, because no duty existed under state law for these 'outsiders' to apply their income for the support of the beneficiaries.

Ibid.; see *Heckler*, 470 U.S. at 201 (purpose of "actual availability principle" is "to prevent the States from relying on imputed or *unrealizable* sources of income artificially to depreciate a recipient's need") (emphasis added).

By contrast, a state filing rule such as California's creates no such uncertainty of support for the dependent child, as every court that has considered such a rule (apart from the Ninth Circuit) has held. See *Wilkes*, 32 F.3d at 1329-1330 (upholding Minnesota assistance unit rule); *Bray*, 25 F.3d at 143-146 (upholding New York assistance unit rule); *MacInnes* v. *Commissioner of Public Welfare*, 593 N.E.2d 222, 225-226 (Mass. 1992) (upholding Massachusetts assistance unit rule). That is because the interests of the dependent child in "economic security," *King*, 392 U.S. at 330, are protected when the AFDC allowance that the assistance unit is given is entrusted to the unit's caretaker relative. The Act mandates that an AFDC caretaker relative "use all of the [AFDC] grant for the benefit of everyone in the assistance unit." *Bray*, 25 F.3d at 144 (quoting *MacInnes*, 593 N.E.2d at 226); see also *Wilkes*, 32 F.3d at 1329-1330. To that end, Section 405 of the Act (42 U.S.C. 605) authorizes States to act to ensure that a caretaker relative spends AFDC funds "in the best interests of the child." Participating States may provide protective payments to third parties, or seek appointment of a

guardian or legal representative for an AFDC beneficiary. They may also impose criminal or civil penalties under state law. *Ibid.*[4] See, *e.g.*, *Bray*, 25 F.3d at 144 (citing New York provisions addressed to misuse of AFDC funds). California law criminalizes misuse of AFDC funds. See Cal. Welf. & Inst. Code § 11480 (West 1991).

The Ninth Circuit's decision in *Beaton* v. *Thompson*, on which that court relied in invalidating California's filing rule, failed entirely to consider the distinct legal obligation of an AFDC caretaker relative to dispense equitably an AFDC allowance among the children within his or her assistance unit. The Ninth Circuit instead inquired only whether the caretaker relative was legally responsible for each of those children under state family law. Because certain caretaker relatives (such as aunts, uncles, or grandparents) are not ordinarily responsible

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[4] Section 405 (42 U.S.C. 605) provides:

> Whenever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child, the State agency may provide for such counseling and guidance services with respect to the use of such payments and the management of other funds by the relative receiving such payments as it deems advisable in order to assure use of such payments in the best interests of such child, and may provide for advising such relative that continued failure to so use such payments will result in substitution therefor of protective payments as provided under section 606(b)(2) of this title; or in seeking appointment of a guardian or legal representative as provided in section 1311 of this title; or in the imposition of criminal or civil penalties authorized under State law if it is determined by a court of competent jurisdiction that such relative is not using or has not used for the benefit of the child any such payments made for that purpose * * *.

for a child under state family law, the Ninth Circuit found the filing rule to be in conflict with the three federal regulations. See *Beaton*, 913 F.2d at 703; see also Br. in Opp. 5 n.3 (also addressing issue of legal responsibility only in terms of California Family Code).

The Ninth Circuit's failure to take into account the legal duty of an AFDC caretaker relative in disbursing an AFDC allowance resulted in that court's misapplication of all three federal regulations. See *Wilkes*, 32 F.3d at 1330; *Bray*, 25 F.3d at 145; *MacInnes*, 593 N.E.2d at 226. Once that duty is recognized, it is apparent that California has not reduced a child's allowance "solely because of the presence in the household of a non-legally responsible individual." 45 C.F.R. 233.20(a)(2)(viii). Nor has California reduced that allowance because of "the inclusion in the family, or the presence in the home, of a 'substitute parent' or 'man-in-the-house.'" 45 C.F.R. 233.90(a)(1). Nor, finally, has California imputed to the child income that is not "actually available," given the entitlement of the child to the AFDC allowance and the duty of the caretaker to provide it. 45 C.F.R. 233.20(a)(3)(ii)(D).

Moreover, although California's adoption of a new filing rule has had the effect of reducing the aggregate funds that some households with multiple dependent children may receive, the filing rule itself is not designed to "reduce" the allowance accruing to a dependent child. On the contrary, when a child is added to an assistance unit, California increases the overall amount of funds provided to that unit. The reduction in *per capita* income to members of the unit that occurs upon the addition of a new member merely derives from the State's presumption that a household will enjoy economies of scale as it grows. That presumption falls within the "great latitude" that the States enjoy in

dispensing their available funds under the AFDC program, see *Dandridge* v. *Williams*, 397 U.S. 471, 478 (1970); see also *New York State Dep't of Social Services* v. *Dublino*, 413 U.S. 405, 414 (1973); *Jefferson* v. *Hackney*, 406 U.S. 535, 541 (1972); *Rosado*, 397 U.S. at 408; *King*, 392 U.S. at 318-319. And any challenge to that presumption is foreclosed by *Dandridge* v. *Williams*, in which this Court upheld, over challenges under the Social Security Act and the Equal Protection Clause a State-imposed ceiling on monthly AFDC allowances that applied regardless of the size of the recipient family. See 397 U.S. at 477 ("[i]t cannot be gainsaid that the effect of the Maryland maximum grant provision is to reduce the per capita benefits to the children in the largest families"); see also *Gilliard*, 483 U.S. at 599 (noting "common sense proposition that individuals living with others usually have reduced per capita costs because many of their expenses are shared") (quoting *Termini* v. *Califano*, 611 F.2d 367, 370 (2d Cir. 1979)); cf. *Lyng* v. *Castillo*, 477 U.S. 635, 640 (1986) (noting "economies of scale that may be realized in group purchase and preparation of food"). California's filing rule was thus a proper exercise of its broad authority under Section 402(a)(7)(A) of the Act to determine the composition of assistance units within its borders.

We recognize that a particular caretaker relative might misapply benefits intended for the members of an assistance unit. But that regrettable possibility exists whether or not the caretaker relative is responsible for the children under state family law. And the possibility of malfeasance even by a caretaker relative who is not responsible under state family law for a child in an assistance unit likewise exists under the regime mandated by the Ninth Circuit and urged by respondents. In that regime, a relative may serve as the AFDC

caretaker for children in the same household who are grouped into separate assistance units, but may not be legally responsible under state family law for each of those children. As the Third Circuit has observed:

> Under the statute a minor cannot be given payments directly; there must always be a representative payee, usually the custodian, who is obliged to use the money received on behalf of the child. 42 U.S.C. § 606(b) (1976 & Supp. II 1978). The entire AFDC program relies on the integrity of the parent or custodian who is expected to disburse the child's grant in accordance with the statutory purpose. While there may be instances in which this statutory assumption is not realized in fact, the state is entitled to develop its plan according to the premise that parents or custodians will carry out their obligations.

Jackson v. *O'Bannon*, 633 F.2d 329, 336 (1980). The California filing rule thus fully comports with HHS's regulations.[5]

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[5] Respondents do not contend that California's filing rule improperly reduces a child's benefits by presuming that a relative caretaker would share his or her *outside* (i.e., non-AFDC) income with a child in the household for whom that caretaker was not responsible under state family law. Such a claim would in any event be untenable. Under the Act and HHS's regulations, the outside income of a parent or sibling is deemed available to a child living in the same household. See 42 U.S.C. 602(a)(38); 45 C.F.R. 233.20(a)(3)(vi)(A). If the outside income of the caretaker were so large as to disqualify the caretaker and the caretaker's offspring from AFDC benefits, California's filing rule would not attribute such income to a non-offspring dependent child (such as a niece) living in the same household. That is because, with the caretaker and his or her offspring ineligible, no other assistance units would exist in that household apart from the unit comprised solely of the

B. THE SECRETARY'S CONSISTENT AND LONGSTANDING INTERPRETATION OF THE FEDERAL REGULATIONS CONFIRMS THE VALIDITY OF THE CALIFORNIA FILING RULE

The court of appeals also erred in failing to defer to the Secretary's consistent interpretation of the three federal regulations in question as permitting state filing rules such as California's. As we explain below, the Secretary has long interpreted those regulations to permit participating States to determine the composition of assistance units, and specifically to treat a caretaker

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non-offspring child. Hence, no consolidation of assistance units would occur. See MPP 205.31 (Pet. App. 51); MPP 82-824.1 (Pet. App. 52).

If, on the other hand, the caretaker had outside income but not enough to disqualify either the caretaker and the caretaker's offspring (or just the offspring) from AFDC benefits, California's filing rule would create one assistance unit comprised of the eligible family members in the household. In that situation, the outside income of that unit's members would be considered countable income of that unit, to be used (along with the complementary AFDC allowance) for the benefit of all members of the unit. That result is entirely proper. The Act assumes that the participating members of an AFDC family who reside in one household share available income with one another, even when those households contain some relatives who do not stand in a parent-child relationship with other household members. See 42 U.S.C. 602(a)(7)(A) (States "shall, in determining need, take into consideration any other income and resources of any child *or relative* claiming aid to families with dependent children (living in the same home as such child and relative) whose needs the State determines should be considered"); 45 C.F.R. 206.10(b)(5); *Gilliard*, 483 U.S. at 606 (noting that child support payments to one child may be used to reduce AFDC allowance of assistance unit, based on "reality" that this money will "become[] part of a larger fund available for all of the children").

relative and the dependent children in that caretaker's household as a single assistance unit. HHS has informed us that, as of its most recent survey, in 1991, the AFDC programs of approximately 28 other States contained rules similar to that of California.

An agency's interpretation of its own regulations is entitled to "controlling weight unless it is plainly erroneous or inconsistent with the regulation." *Thomas Jefferson Univ. Hosp.* v. *Shalala*, 114 S. Ct. 2381, 2386 (1994) (quoting *Udall* v. *Tallman*, 380 U.S. 1, 16-17 (1965), quoting *Bowles* v. *Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945)).[6] Broad deference is particularly appropriate when the question of interpretation arises, as it does here, under "a complex and highly technical regulatory program" entailing "significant expertise and * * * the exercise of judgment grounded in policy concerns." *Thomas Jefferson Univ. Hosp.*, 114 S. Ct. at 2387 (quoting *Pauley* v. *BethEnergy Mines, Inc.*, 501 U.S. 680, 697 (1991)); see *Schweiker* v. *Gray Panthers*, 453 U.S. 34, 44 (1981) (noting that "[t]he Social Security Act is among the most intricate ever drafted by Congress" and that Congress has accordingly "conferred on the Secretary exceptionally broad authority to prescribe standards for applying certain sections of the Act"). In short, deference to the Secretary's interpretation is required "unless an alternative reading is compelled by the regulation's plain language or by other

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[6] See also *Stinson* v. *United States*, 113 S. Ct. 1913, 1919 (1993); *Martin* v. *OSHRC*, 499 U.S. 144, 150-151 (1991); *Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 332, 359 (1989); *Gardebring* v. *Jenkins*, 485 U.S. 415, 430 (1988); *Northern Indiana Pub. Serv. Co.* v. *Porter County Chapter of the Izaak Walton League of America, Inc.*, 423 U.S. 12, 15 (1975); *Ehlert* v. *United States*, 402 U.S. 99, 105 (1971).

indications of the Secretary's intent at the time of the regulation's promulgation.'" *Thomas Jefferson Univ. Hosp.*, 114 S. Ct. at 2386-2387 (quoting *Gardebring* v. *Jenkins*, 485 U.S. 415, 430 (1988)). Here, the Secretary's interpretation is fully consistent with the regulations' plain language, as explained above, and the indications of the Secretary's intent at and since the time of the regulations' promulgation strongly reinforce the conclusion that they are not addressed to the situation presented in this case.

In 1968, HEW addressed the situation in which a household contained two or more dependent children living together with separate caretaker relatives, noting that a State has authority to define the number of assistance units in those circumstances. See 33 Fed. Reg. 10,234 (1968). That policy is now codified at 45 C.F.R. 237.50(b)(4), which provides that in such a situation, "there *may* be two separate AFDC families (assistance units), if neither family includes a parent or sibling included in the other family" (emphasis added).

In 1976, after promulgation of the three regulations at issue in this case, HEW addressed itself specifically to the issue presented here. A memorandum from the Administrator of HEW's Social and Rehabilitation Service stated:

> States may * * * provide for two AFDC payments in the case of a mother who is the caretaker relative for her own children and her sister's children. In such a situation, the State may establish two budget units or it may include all children in one AFDC payment. Federal matching would be available in either budgeting method.

Memorandum from Robert Fulton, Administrator, Social and Rehabilitation Service, to Alwyn L. Carty, Regional

Commissioner, Region III, Social and Rehabilitation Service (Oct. 13, 1976), cited at *Bray*, 25 F.3d at 142.

In 1980, HEW reiterated its view that States had discretion to determine the composition of assistance units. During a lawsuit that challenged a Maryland plan in which a minor mother and her child had been included in one assistance unit with the minor mother's parent and siblings, the district court solicited HHS's views. See *Allen* v. *Hettleman*, 494 F.Supp. 854 (D. Md. 1980) (upholding Maryland's plan). The Secretary responded that the plan was "fully permissible under Federal law and regulations" (*id.* at 861) and added, in language pertinent here:

> The composition of an AFDC assistance unit is not defined in Federal law. So too, the budgeting methods a state may use to determine the level of an AFDC payment to a family is not mandated by Federal requirements. Therefore, states are free to prescribe the composition of an AFDC assistance unit and the budgeting method they will use for such unit. * * * [Maryland's] definition of the state's assistance unit does not conflict with any Federal requirement. In fact, Federal regulations anticipate that states will differ in defining their assistance units.

Id. at 861-862 (quoting Secretary's letter).

In 1986, following enactment of DEFRA, HHS addressed the Act's new filing unit provisions in a transmittal to state agencies. See Action Transmittal No. SSA-AT-86-1 (Jan. 13, 1986) (Pet. App. 44-50). Under DEFRA, the transmittal noted, States were now required to include in the same assistance unit both the parents of a dependent child and the dependent siblings of

that child. *Id.* at 46-50. But, the Secretary noted (*id.* at 50):

> Outside of this policy, it is up to the State to establish policy on the number of assistance units in the household, e.g., when an individual not related to a member of an assistance unit as a parent, brother or sister lives in the household and files for assistance.

In 1992, in promulgating final rules under DEFRA, HHS again took the position that DEFRA left to the States the decision whether or not to consolidate separate assistance units within the same household. See 57 Fed. Reg. 30,132 (1992). Describing a hypothetical household, HHS stated that Section 402(a)(38) of the Act, 42 U.S.C. 602(a)(38), added by DEFRA, "does not require the consolidation of assistance units, though the State may choose to do so." 57 Fed. Reg. at 30,136. And while a State must consolidate multiple assistance units when Section 402(a)(38) requires the same individual to be included in each unit, the transmittal stated that "in the absence of such an individual, there is no Federal requirement that assistance units be consolidated." 57 Fed. Reg. at 30,137.

HHS most recently addressed the issue of state filing rules in March 1994, in a transmittal from the Secretary to state AFDC agencies that was prompted by the pending legal challenges to such rules in this case, *Bray* v. *Dowling*, and *Wilkes* v. *Gomez*, *supra*. See Action Transmittal No. ACF-AT-94-6 (Mar. 16, 1994) (Pet. App. 33). That transmittal explained that States are required to consolidate persons residing in the same household into one assistance unit only where consolidation is mandated by DEFRA, or where a person is included within two or more assistance units within the same

household (in which case consolidation was mandated by 45 C.F.R. 233.20(a)(1)(iii)). Pet. App. 35. But beyond those two situations, "States are authorized to set the State-wide policy * * * whether and under what conditions two or more assistance units in the same household are to be consolidated or retained as separate units." *Ibid.*

The March 1994 transmittal further explained that state filing rules such as California's do "not conflict with the Federal regulations that prohibit assuming the availability of income from certain persons without actually determining that it has been contributed." Pet. App. 34. Although those regulations "prohibit the State from assuming the availability of income * * * from a person who is not a member of the assistance unit and who is not legally responsible for supporting the child," the transmittal explained that they do not prohibit a State from assuming the contribution of income by a person (such as the caretaker relative) within that unit. That income is "available" to the unit, and States are not obliged to prove on a case-by-case basis that members of a unit are actually contributing funds to the unit as required. *Id.* at 37-38, 40. The transmittal also pointed out (*id.* at 42) that Section 405 of the Act identifies remedies for States to pursue "whenever there is reason to believe that payments made in behalf of a child(ren) in an assistance unit are not being used for the child's best interests."[7] See pages 14-16, *supra.*

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[7] Because HHS's transmittal acknowledged (Pet. App. 34) that it was prompted by lawsuits challenging state consolidation rules, respondents argue (Br. in Opp. 15) that the transmittal is not entitled to deference. But the fact that a federal regulation is issued in the course of litigation "is of no consequence." *United States* v. *Morton*, 467 U.S. 822, 835 n.21 (1984). On the contrary, "Congress authorized the issuance of regulations so that problems

HHS's consistent and longstanding interpretation of its own regulations to permit state filing rules such as California's is entitled to substantial deference. *Thomas Jefferson Univ. Hosp.*, 114 S. Ct. at 2386. Because that interpretation accords with the language of these regulations and their evident purpose, the court of appeals erred in holding that the regulations bar California's filing rule. See *Wilkes*, 32 F.3d at 1329 (finding "HHS's construction of the availability principle faithful to the relevant regulations' plain language"); *Bray*, 25 F.3d at 143 (deferring to HEW's and HHS's "consistent interpretation[]" of these regulations); *MacInnes*, 593 N.E.2d at 226.

C. RESPONDENTS' ADDITIONAL CHALLENGES TO THE CALIFORNIA FILING RULE ARE WITHOUT MERIT

1. Respondents suggest (Br. in Opp. 6) that the Act itself bars States from consolidating AFDC assistance units. They note that when this Court upheld DEFRA's requirement that siblings be consolidated within one unit, it "relied on the federal *congressional* power to define the AFDC program, not the state's power to define assistance units." *Ibid.* (citing *Gilliard*, 483 U.S. at 604-605). But as we have pointed out above (see page 4, *supra*), Section 402(a)(7)(A) of the Act expressly leaves to the States the power to determine which of the individuals living in the same home as the AFDC beneficiary shall have their income and resources

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arising in the administration of [a] statute could be addressed," and "[l]itigation often brings to light latent ambiguities or unanswered questions that might not otherwise be apparent." *Ibid.* As in *Morton*, when HHS responded to this and other litigation by issuing an explanatory transmittal, "it was doing no more than the task which Congress had assigned it." *Ibid.*

"take[n] into consideration." 42 U.S.C. 602(a)(7)(A). Although DEFRA itself mandated inclusion within the same unit of immediate family members who reside together, nothing in DEFRA suggested that States are precluded from mandating further consolidation of household members who reside together. Indeed, as the Second Circuit has noted, "[i]t would be anomalous to conclude that, as part of an act designed to reduce budget outlays, Congress would prohibit states from employing the cost-saving measures of including members of an extended family who reside together in a single AFDC assistance unit." *Bray*, 25 F.3d at 142. Ascribing such an intention to Congress would also be inconsistent with the "great latitude" that States have historically been accorded to shape their own AFDC programs. See cases cited pp. 16-17, *supra*; see also *Dublino*, 413 U.S. at 414 (state AFDC rules valid unless Federal law prohibits them in "direct and unambiguous language").

2. Respondents also contend (Br. in Opp. 16-18) that California's filing rule conflicts with the obligation of a participating State to ensure the equitable treatment of AFDC beneficiaries within that State. See 45 C.F.R. 233.20(a)(1)(i) (State must determine need and amount of assistance for all applicants and recipients on an "objective and equitable basis"); 45 C.F.R. 233.20(a)(2)(iii) ("[a] State Plan for * * * AFDC * * * must [p]rovide that the standard will be uniformly applied throughout the State").

Respondents object (Br. in Opp. 16-17) that under California's rule, the same child will receive a greater amount of AFDC benefits if taken into a household with no other AFDC-eligible persons than if taken into a household that already constitutes an AFDC assistance

unit.[8] But the California rule seeks to achieve a different form of equity. It premises uniformity upon identical treatment of similarly sized AFDC households in which a caretaker relative is required to expend the AFDC allowance in the best interests of all members of the household. See Pet. 7-9 (illustrating how *Beaton* rule endorsed by respondents results in varying-sized AFDC allowances given to households with same number of AFDC-eligible persons, depending solely on whether the children in the household were the offspring or nieces of the caretaker).

Nothing in HHS's regulations requires a State to choose one of those two mutually exclusive concepts of equity over another. See Pet. App. 42 (HHS Action Transmittal No. ACF-AT-94-6) (Mar. 16, 1994) ("[t]he decision to consolidate assistance units * * * is * * * a policy determination that a State makes balancing the equities," and a State may "opt to consolidate assistance units in order to promote equitable treatment for households of similar composition: all households having a parent or caretaker relative and four eligible children, for example, would receive the same level of payment"); *Wilkes*, 32 F.3d at 1330; *Bray*, 25 F.3d at 146; *MacInnes*, 593 N.E.2d at 226-227. Rather, the choice between those approaches is one of the "intractable economic, social, and even philosophical problems presented by public welfare assistance programs" that, under the Social

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[8] This claim was raised below. But, because *Beaton* had based its invalidation of Washington State's filing rule solely on its reading of HHS's income-attribution regulations, the courts below did not rely on the equitable treatment regulations in invalidating California's filing rule.

Security Act, is left to the States to decide. See *Dandridge*, 397 U.S. at 487; *Jefferson*, 406 U.S. at 551.[9]

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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[9] For this reason, respondents' claim (Br. in Opp. 8) that California was obliged to adopt as an alternative to its filing rule a plan prorating AFDC allowances based on the presence in the household of members outside of the assistance unit is without merit. Under 42 U.S.C. 612 and 45 C.F.R. 233.20(a)(5), States may reduce discrete portions of an assistance unit's allowance such as shelter and utilities, to reflect the fact that non-unit members of the household contribute towards those expenses. But those provisions do not either mandate that a State structure its AFDC plan in that manner or limit a State's authority under Section 402(a)(7)(A) to determine the composition of assistance units.